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HEWLETT-PACKARD COMPANY
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| EXAMINER |
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OYEBISI, OJO O

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| ART UNIT | PAPER NUMBER |
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3692

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05/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/902,928

Applicant(s)

GULER ET AL.

Examiner

OJO O. OYEBISI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2007.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-8, 10-16 and 18-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-8, 10-16 and 18-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

In the amendment filed 01/16/2007, the following have occurred: claims 2-8, 10-16, and 18-24 have been amended, new claims 25, 26 and 27 have been added, and claims 2-8, 10-16, and 18-27 remain pending in the patent application.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3-8, 11-16, and 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seymour et al (Sey hereinafter, US PAT: 6,871,190).

Re claim 6. Sey discloses a method for determining a reserve price for a market, said method comprising: selecting characteristics of said market (see col.5, lines 31-36, also see abstract); selecting a relevant bidding model (i.e., generating a bidding and selling strategy, see col.2 lines 30-60, also see col.6 lines 55-67); estimating a structure of said market (see col.4, lines 30-49 and col.5 lines 11-15); predicting a bidding behavior (i.e., recommendations to the seller and/or bidder regarding how to bid and/or sell is based on a prediction of the bidding behavior of the various bidders, see col.5 lines 7-20); predicting a first outcome of said market (i.e., the input data is transmitted to the processing unit of the seller site terminal and the optimum type of auction together with the optimum

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value of the reserve bid price for sale of such merchandise is determined....., see col.6, lines 56-59); evaluating said first outcome of said market (i.e., the input data is transmitted to the processing unit of the seller site terminal and the optimum type of auction together with the optimum value of the reserve bid price for sale of such merchandise is determined....., see col.6, lines 56-59. Note that to determine the optimum reserve price, the data regarding the auction including the seller, bidders and merchandise is used to evaluate and analyze what the predicted outcome would be for each auction format). Sey does not explicitly disclose wherein said estimating comprises expressing unobservable variables in terms of observable bids, wherein said unobservable variables are expressed in terms of observable bids by inverting said bid model. Official notice is taken however, that: to express unobservable variables in terms of observable variables; to create a sample of the data; to use the sample to generate a statistical distribution of the sample data; to make estimates or assumptions about the market; and to report upon or generate an output of the results is old and well-known. It is common practice in fields such as mathematics, statistics and economics to use these methodologies for the purpose of using historical data, reasonable assumptions, etc. to make predictions or estimations about the future (e.g., economic predictions, research studies). Thus, it would have been obvious to one of ordinary skill in the art to modify the teachings of Seymour in light of the official notice taken for the purpose of estimating the structure of said market based on the historical data on record.

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Re claims 14 and 22. Claims 14 and 22 recite similar limitations to claim 6, and thus rejected using the same art and rationale in the rejection of claim 6.

Re claim 3. Sey discloses the method, wherein said selecting a relevant bidding model further comprises: receiving said auction characteristics data (see col.5, lines 29-26); accessing a database (see col.5, lines 21-25. Note that data gathering exercises are disclosed, thus database is accessed to retrieve the said data); retrieving from said database a relevant bidding model (i.e., series of bidding and selling strategies are then generated for each type of auction type, see col.4, lines 49-51) wherein said bidding model is selected based on a corresponding relevance of said auction characteristics data (see col.5, lines 11-15. Note that input data is processed and used to determine the optimum values for the reserve bid price and for starting bid price); and outputting said relevant bidding model (i.e., the optimum values for the reserve bid price and for the starting bid price are displayed for the seller, see col.6 lines 56-65).

Re claim 4. Sey further discloses the method, wherein said estimating step further comprises the steps of: receiving said relevant bidding model (see col.4, lines 49-51); receiving said bids data (see col.5, lines 21-25); estimating an estimated latent structure of said market (see col.4, lines 30-49 and col.5 lines 11-15). Sey does not explicitly disclose transforming said bids data to a sample of inverted bids, wherein said bids data are transformed by inverting said bid model, wherein said sample of inverted bids receives application of statistical density estimation techniques to obtain said estimated structure; and outputting said estimated structure. Official notice is taken however, that: to transform bids

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data to inverted bids; to create a sample of the data; to use the sample to generate a statistical distribution of the sample data; to make estimates or assumptions about the market; and to report upon or generate an output of the results is old and well-known. It is common practice in fields such as mathematics, statistics and economics to use these methodologies for the purpose of using historical data, reasonable assumptions, etc. to make predictions or estimations about the future (e.g., economic predictions, research studies). Thus, it would have been obvious to one of ordinary skill in the art to modify the teachings of Seymour in light of the official notice taken for the purpose of estimating the structure of said market based on the historical data on record.

Re claim 5. Sey discloses the method, wherein said bidding model has embedded an unknown structure, and wherein said predicting a bidding behavior further comprises: receiving said estimated structure (i.e., bid criteria, see fig.4 element 104); receiving said relevant bidding model (i.e., series of bidding and selling strategies are then generated for each type of auction type, see col.4, lines 49-51); substituting said estimated structure for said unknown structure (see col.4 lines 30-45); and outputting a prediction of bidding behavior (i.e., recommendations to the seller and/or bidder regarding how to bid and/or sell is based on a prediction of the bidding behavior of the various bidders, see col.5 lines 7-20).

Re claim 7. Sey discloses the method, wherein said evaluating said first outcome step comprises: receiving a third user input, wherein said third user

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input comprises a plurality of candidate reserve prices see col.6, lines 56-59, Sey input interface can accommodate more than one user)); receiving a predicted outcome for each said candidate reserve price (see col.7 lines 15-20). Sey does not explicitly disclose calculating descriptive statistics for each said candidate reserve price, wherein said descriptive statistics comprise a mean and a variance; ranking each said candidate reserve price with respect to said calculated mean and generating corresponding rankings for said plurality; and outputting said descriptive statistics and said rankings. Official notice is taken however, that it is old and well known in the fields of mathematics and statistics/economics to use methodologies disclosed hereinabove for the purpose of comparison and decision-making (e.g., product purchase decisions; evaluating business opportunities etc). Thus, it would have been obvious to incorporate what is old and well known in Sey for the purpose of evaluating an auction format/reserve prices, comparing different reserve prices and ultimately making a decision about the optimal reserve price.

Re claim 8. Sey discloses the method, further comprising: selecting a best reserve price, wherein said best reserve price comprises the candidate reserve price within said plurality having the highest said ranking; and outputting said best reserve price (see col.6 line 55 through col.7 lines 20).

Re claim 11. Claim 11 recites similar limitations to claim 3, and thus rejected using the same art and rationale in the rejection of claim 3.

Re claim 13. Claim 13 recites similar limitations to claim 5, and thus rejected using the same art and rationale in the rejection of claim 5 above.

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Re claims 15 and 23. Claims 15 and 23 recite similar limitations to claim 7, and thus rejected using the same art and rationale in the rejection of claim 7.

Re claim 16. Claim 16 recites similar limitations to claim 8, and thus rejected using the same art and rationale in the rejection of claim 8.

Re claims 12 and 20. Claims 12 and 20 recite similar limitations to claim 4, and thus rejected using the same art and rationale in the rejection of claim 4.

Re claim 19. Claim 19 recites similar limitations to claim 3, and thus rejected using the same art and rationale in the rejection of claim 3.

Re claim 21. Claim 21 recites similar limitations to claim 5, and thus rejected using the same art and rationale in the rejection of claim 5.

Re claim 24. Claim 24 recites similar limitations to claim 8, and thus rejected using the same art and rationale in the rejection of claim 8.

Re claims 25-27. Sey further discloses the method, wherein said predicting a first outcome further comprises: receiving a second user input, wherein said second user input comprises: an evaluation criterion (see col.4 line 67, also see col.6 lines 56-59, the evaluation criteria that is used to determine the optimum type of auction is based on an evaluation of the profit generated or loss incurred), a candidate reserve price, and a constraint (see col.6 lines 56-59); receiving said estimated structure (i.e., bid criteria, see fig.4 element 104); receiving said bidding behavior prediction for said candidate reserve price (see col.5 line 7-15), receiving said estimated structure (i.e., bid criteria, see fig.4 element 104); receiving said bidding behavior prediction for said candidate reserve price (see col.5 lines 7-15), wherein said bidding behavior prediction further comprises a

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prediction under said constraint (see col.5 lines 7-15); obtaining a value of said evaluation criterion (see col.4 line 67, col.6, lines 56-59, the evaluation criteria used to determine the optimum type of auction is based on an evaluation of the profit generated or loss incurred), wherein said value is based on said - said constraint, said value comprising said first predicted outcome; and outputting said value (see col.6, lines 63-67, discussion of a display screen and customer confirmation).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 10 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over of Seymour et al (Sey hereinafter, US PAT: 6,871,190) in view of Rackson et al (Rackson hereinafter, US PAT: 6,415,270)

Re claims 2, 10, and 18. Sey discloses the method, wherein said selecting characteristics further comprises: receiving a first user input, wherein said first user input comprises information identifying an item to be auctioned (see col.6, lines 42-60); accessing a database (see col.5 lines 21-25, note that data gathering exercises are disclosed, thus database is accessed to retrieve the data); retrieving from said database auction characteristics data (see col.5 lines

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29-36). Sey fails to explicitly disclose retrieving from said database historical bids data; wherein said auction characteristics comprise information relating to historical auctions of similar items; outputting said bids data; and outputting said auction characteristics data. However, Rackson discloses retrieving from said database historical bids data (i.e., historical items of similar items sold from either an internal database or data retrieved from remote auction service; see Rackson col.24 lines 30-67) and outputting said bids data (i.e., the historical data may be displayed showing the normal distribution of final bids based on the strategies used or upon the condition of the item, see Rackson col.24 lines 45-57) and outputting said auction characteristics data (i.e., the historical data may be displayed showing the normal distribution of final bids based on the strategies used or upon the condition of the item, see Rackson col.24 lines 45-57). Thus, it would have been obvious to one of ordinary skill in the art to combine Sey and Rackson to determine the optimal selling parameters to be applied to the items that are being offered.

Response to Arguments

Applicant's arguments filed 01/16/07 have been fully considered but they are not persuasive. The applicant argues in substance that the cited prior art of record, Seymour, fails to teach or suggest the limitations" said estimating comprises expressing unobservable variables in terms of observable bids, wherein said unobservable variables are expressed in terms of observable bids by inverting said bid model." The examiner maintains that expressing unobservable variables in terms of observable variables; to create a sample of the data; to use the

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sample to generate a statistical distribution of the sample data; to make estimates or assumptions about the market; and to report upon or generate an output of the results is old and well known. It is common practice in fields such as mathematics, statistics and economics to use these methodologies for the purpose of using historical data, reasonable assumptions, etc. to make predictions or estimations about the future (e.g., economic predictions, research studies). Thus, it would have been obvious to one of ordinary skill in the art to modify the teachings of Seymour in light of the official notice taken for the purpose of estimating the structure of said market based on the historical data on record. The examiner wants to inform the applicant that a seasonal challenge constitutes a demand for evidence made as soon as practicable during prosecution. Applicant is charged with rebutting the well known statement in the next reply after the office action in which the well known statement was made. Thus since the applicant has failed to rebut the well known statements made by the examiner in the two previous office actions received by the applicant, the lack of rebuttal on the part of the applicant constitutes consent that the well known statement is construed to be true.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is

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filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OJO O. OYEBISI whose telephone number is (571) 272-8298. The examiner can normally be reached on 8:30A.M-5:30P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HYUNG S. SOUGH can be reached on (571)272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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SUPERVISORY PATENT EXAMINER